

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellant

v.

OROBOSA IZINEG ENAGBARE

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1529 EDA 2013

Appeal from the Order Entered April 30, 2013  
In the Court of Common Pleas of Chester County  
Criminal Division at No(s): CP-15-CR-0002279-2012

BEFORE: BENDER, P.J.E., PANELLA, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J.

**FILED APRIL 17, 2014**

The Commonwealth of Pennsylvania appeals the order entered on April 30, 2013, in the Court of Common Pleas of Chester County, granting Orobosa IZINEG Enagbare's motion to suppress all statements made by Enagbare to Detective Stan Billie and Sergeant Louis DeShullo (the "Officers") on May 31, 2012. After careful review, we affirm.

The trial court ably summarized the facts as follows:

[Enagbare] is accused of rape, sexual assault, aggravated indecent assault, and indecent assault for an incident allegedly occurring on May 27, 2012. On May 30, 2012, Detective Stan Billie of the Borough of West Chester Police Department obtained a warrant for [Enagbare's] arrest. On May 31, 2012, Detective Billie contacted [Enagbare] and told him he would like to talk to him about the events of May 27, 2012. [Enagbare] stated that he was working at the Avondale Fire Company and was unable to leave. Detective Billie said they could come to the fire station.

Detective Billie arrived at the fire station with Sgt. Louis DeShullo. [Enagbare] led them to a meeting room with a long

table in it. Even though Detective Billie and Sgt. DeShullo had the arrest warrant with them, they did not tell [Enagbare] he was under arrest, nor did they read him his **Miranda**<sup>[1]</sup> rights. Instead, they told him he was not in custody, he was free to leave at any time, he did not have to answer any questions, and he could ask them to leave at any time. They then proceeded to question him for a period of 47 minutes about the events of May 27, 2012.

At the conclusion of the interview, Detective Billie advised [Enagbare] there was an active warrant out for his arrest for the conduct about which he had just been questioned and he was asked to come to the police station. [Enagbare] drove himself to the Fame Fire Company in West Chester, where he then got into Detective Billie's car and was taken to the police station.

In the first trial of this matter, the following exchange occurred during cross-examination of Detective Billie:

Q Okay. Your interview with Robbie [nickname for Enagbare] comes on Thursday, correct?

A Thursday, correct.

Q Thursday, May 31<sup>st</sup>.

A Yes.

Q So between Tuesday afternoon and Thursday afternoon, when you go to the fire company did you attempt to get a warrant for Robbie's arrest?

A I believe I obtained a warrant for his arrest on the 30<sup>th</sup>.

Q So you already had a warrant for his arrest on the 30<sup>th</sup>?

A Yes.

Q Did you inform him when you got to the fire company that you had a warrant for his arrest?

A No, I did not. Prior to or after, no, no I did not.

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<sup>1</sup> **See *Miranda v. Arizona***, 384 U.S. 436 (1966).

**Q The reason you didn't tell him that because you would have to give him *Miranda* rights before you interviewed him, correct?**

**A Correct.**

Q You didn't want to tell him he was in custody and not free to speak to you?

A I am sorry.

Q You didn't want to tell him he was being arrested because you were afraid he wouldn't talk to you?

A I wouldn't say that.

Q But you had a warrant for his arrest on Wednesday, May 30<sup>th</sup>, correct?

A Correct.

Q You chose not to arrest him and not to tell him, correct?

A Correct.

Q Then you went to where he worked and asked him if he would talk to you, correct?

A Correct.

Q You told him he wasn't in custody, correct?

A Correct.

Q But, in fact, you had a warrant to take him into custody, correct?

A If I chose that option.

**Q And if he told you he didn't want to talk to you, you would have taken him in right then, correct?**

**A Correct.**

N.T. Trial, 2/13/13, at 102-04 [emphasis added].

Trial Court Opinion, 5/1/13, at 1-3. The first trial ended in a mistrial for unrelated reasons. On March 20, 2013, Enagbare filed a motion to bar

retrial, which the trial court denied. Shortly thereafter, Enagbare filed the motion to suppress that is the basis of this appeal. A suppression hearing occurred on April 18, 2013, and on April 30, 2013, the trial court granted Enagbare's motion to suppress, concluding that the interview conducted on May 31, 2012, violated Enagbare's **Miranda** rights, and therefore, any and all statements made by Enagbare during the interview would be inadmissible at trial. This timely appeal followed.

On appeal, the Commonwealth asks us to review whether the trial court erred in finding Enagbare was the subject of a custodial interrogation requiring **Miranda** warnings and as a result erroneously suppressed Enagbare's statements to the police.<sup>2</sup> Brief of Appellant, at 6.

Our standard of review when the Commonwealth appeals from a suppression order is as follows:

[W]here a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.

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<sup>2</sup> Enagbare also challenges the Commonwealth's good faith certification that the suppression order will terminate or substantially handicap its prosecution. **See** Pa.R.A.P. 311. Enagbare asserts that the prosecution has two alternate, valid sources of evidence that are substantively identical to the evidence at issue. The question of whether the evidence is sufficient for the Commonwealth to meet its burden of proof is not before us at this time and we will not address it. We remind the Commonwealth that such certifications are to be made in good faith and caution that the filing of a certification no longer requires blind acceptance and this Court is permitted to examine the basis of such certifications. **See Commonwealth v. Cosnek**, 836 A.2d 871 (Pa. 2003); **see also Commonwealth v. White**, 910 A.2d 648 (Pa. 2006).

Pa.R.Crim.P. 323(h). In reviewing the ruling of a suppression court, our task is to determine whether the factual findings are supported by the record. If so, we are bound by those findings. Where, as here, it is the Commonwealth who is appealing the decision of the suppression court, we must consider only the evidence of the defendant's witnesses and so much of the evidence for the prosecution as read in the context of the record as a whole remains uncontradicted. Moreover, if the evidence supports the factual findings of the suppression court, this Court will reverse only if there is an error in the legal conclusions drawn from those findings.

**Commonwealth v. Powell**, 994 A.2d 1096, 1101 (Pa. Super. 2010) (citations omitted). Moreover, “[i]t is within the suppression court’s sole province as fact finder to pass on the credibility of witnesses and the weight to be given to their testimony. The suppression court is free to believe all, some or none of the evidence presented at the suppression hearing.”

**Commonwealth v. Elmobydy**, 823 A.2d 180, 183 (Pa. Super. 2003) (citations omitted).

A police officer must administer **Miranda** warnings prior to any custodial interrogation of a suspect. **Miranda, supra**. For **Miranda** to apply, two separate requirements must be found, custody and interrogation. **See Commonwealth v. Whitehead**, 629 A.2d 142, 144 (Pa. Super. 1993). Here, the Commonwealth concedes an interrogation occurred on May 31, 2013. Thus, the only issue before this Court is whether the trial court properly concluded that Enagbare was in police custody during the interrogation.

Whether a person is in custody for **Miranda** purposes depends on whether the person is physically denied of [her] freedom of action in any significant way or is placed in a situation in which

[she] reasonably believes that [her] freedom of action or movement is restricted by the interrogation. Moreover, the test for custodial interrogation does not depend upon the subjective intent of the law enforcement officer interrogator. Rather, the test focuses on whether the individual being interrogated reasonably believes [her] freedom of action is being restricted.

. . .

Said another way, police detentions become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of arrest.

Thus, the ultimate inquiry for determining whether an individual is in custody for **Miranda** purposes is whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Under the totality of the circumstances approach, the following factors are relevant to whether a detention has become so coercive as to constitute the functional equivalent of a formal arrest: the basis for the detention; its length; its location; whether the suspect was transported against his or her will, how far, and why; whether restraints were used; whether the law enforcement officer showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions.

**Commonwealth v. Williams**, 941 A.2d 14, 30-31 (Pa. Super. 2008)

(citations omitted). "The fact that a defendant was the focus of the investigation is also a relevant factor in determining whether he was 'in custody,' but does not require, *per se*, **Miranda** warnings."

**Commonwealth v. Peters**, 642 A.2d 1126, 1130 (Pa. Super. 1994) (en

banc). "It is not simply custody plus 'questioning,' as such, which calls for **Miranda** safeguards, but custody plus police conduct . . . calculated to, expected to, or likely to, evoke admissions." **Commonwealth v. O'Shea**,

318 A.2d 713, 715 (Pa. 1974). Ultimately, "whether a person is in custody

for **Miranda** purposes must be evaluated on a case-by-case basis with due

regard to the particular facts involved.” **Commonwealth v. Mannion**, 725 A.2d 196, 202 (Pa. Super. 1999) (en banc).

Here, it is undisputed that the Officers arrived at Avondale Fire Company with an arrest warrant for Enagbare concerning the charges about which they intended to question him. At that point, no further information was needed for the Officers to conclude that Enagbare had committed a crime, and the Officers asked Enagbare questions to which they already knew the answers. The Officers’ conduct was not an innocent attempt to gather information, rather, it was “likely to,” if not “calculated to” or “expected to” evoke admissions and develop contradictions. **O’Shea, supra**. Under these circumstances, the failure to advise Enagbare of his constitutional rights at the initiation of the interrogation tainted the subsequent confession and the trial court properly granted Enagbare’s motion to suppress.

The Commonwealth asserts that under the totality of the circumstances, Enagbare was neither physically deprived, nor could he have harbored a reasonable belief that he had been deprived, of his freedom of action in any significant way. The basis for the detention was to “attempt to interview” Enagbare. N.T. Suppression Hearing, 4/18/13, at 27. The detention lasted 47 minutes. The detention occurred in a meeting room at the Avondale Fire Company in which the Officers sat across from Enagbare at a long table with the doors closed. The Officers did not transport Enagbare against his will at any time, nor was he restrained at any time.

The Officers did not use force. Based on this assessment, the Commonwealth maintains that Enagbare was not in custody for the purposes of **Miranda**.

While the interaction between Enagbare and the Officers may have been cordial, the degree of respect shown by each party does not determine whether an interrogation is custodial. It was the Officers' intention to arrest Enagbare regardless of whether he cooperated with the interrogation. N.T. Trial, 2/13/13, at 104. Enagbare knew that the Officers were investigating him, and that he was not free to get up and walk out. This belief was correct, as Detective Billie testified that if, in fact, Enagbare did try to walk out, he would have been arrested immediately. **Id.** Whether the Officers arrested Enagbare before or after the interrogation, the result would have been the same. Therefore, under the totality of the circumstances specific to this case, the trial court properly concluded that the conditions of the detention constituted the functional equivalent of an arrest, and Enagbare was in police custody during the interrogation.

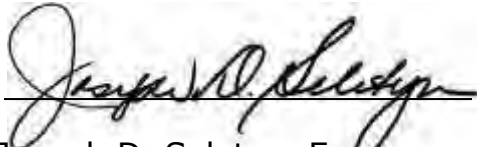
Moreover, we cannot ignore the fact that Detective Billie admitted to not advising Enagbare of the arrest warrant in order to circumvent the constraints on custodial interrogation established by **Miranda**. N.T. Trial, 2/13/13, at 103. We cannot condone this behavior. **See Berkemer v. McCarty**, 468 U.S. 420, 442 (1984) (admonishing police conduct circumventing constraints on custodial interrogations established by **Miranda**).



For these reasons, we affirm the trial court's grant of Enagbare's suppression motion.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/17/2014